

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**FIDELITY & GUARANTY LIFE  
INSURANCE COMPANY,**

**Plaintiff,**

**v.**

**1:23-cv-00731-DHU-LF**

**FLORENCE DENISE SHIPMAN et al.,**

**Defendant.**

**MEMORANDUM OPINION AND ORDER**

This matter is before the Court on Plaintiff's Motion to Dismiss Plaintiff from Case, to Discharge Liability, and to Award Attorney's Fees and Costs. (Doc. 25). Plaintiff Fidelity & Guaranty Life Insurance Company ("Plaintiff") commenced this action by filing its Complaint in Interpleader due to a dispute over the who was the proper beneficiary of Defendant Florence Denise Shipman's life insurance policy.<sup>1</sup> Doc. 1. Both Defendant Ray Encinias and Defendant Joel Willard Shipman, SR. asserts claims to the \$250,000 life insurance policy payout. Now, Plaintiff seeks to leave this action, to have their liability discharged, and to be awarded attorney's fees and costs. For the reasons stated below, Plaintiff's motion is GRANTED.

The Court need not assess this motion on its merits because it is unopposed. Defendant Encinias filed a response in which he "consents to all relief requested in the Motion." Doc. 26 at 1. Defendant Shipman did not respond to the motion. "The failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion." Local R. Civ. P. 7.1 (a). In the District of New Mexico, a response to a motion

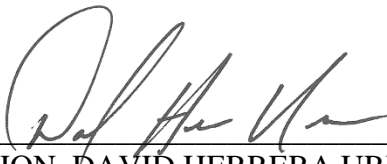
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<sup>1</sup> Defendant Denise Shipman is deceased. Her estate is the first Defendant in this case.

must be served and filed within fourteen (14) calendar days after service of the motion. Local R. Civ. P. 7.4(a) and Fed. R. Civ. P. 6(a), (d). Plaintiff's motion was filed on January 31, 2024, and therefore a response was due on February 14, 2024. Given that it is April 12, 2024, the deadline to file a response has passed and therefore Defendant Shipman has constructively consented to Plaintiff's motion.

Given that this motion is unopposed, the Court finds it well taken and will **GRANT** Plaintiff's Motion (**Doc. 25**).

**IT IS SO ORDERED.**

  
HON. DAVID HERRERA URIAS  
UNITED STATES DISTRICT JUDGE